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Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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JANICE MAYES,
MINORITY CHIEF COUNSEL

May 13, 2013

Ms. Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, Southwest
Washington, D.C. 20201

Madam Secretary:

As you know from your recent appearance before the Ways and Means Committee, oversight of ObamaCare is a chief priority of the Members of the Committee. We continue to have significant concerns with the law and its implementation. As you are aware, there is growing bipartisan alarm about the readiness of the Exchanges, the delays in developing marketing plans, the funding of the Federal Exchanges, higher premiums and a very low enrollment rate in the Exchanges.

The extraordinary failure of ObamaCare's proponents to anticipate that states would choose not to establish state-based exchanges resulted in a shortfall in funding for Federal Exchanges. Yet, the majority of the Exchanges will in fact be federally-run. In a desperate attempt to undo this oversight, the Administration has raided other sources of funding, including the widely publicized "Prevention Fund." This practice has also received bipartisan criticism.

It is clear that your Department is scrambling to find funding from sources the law did not authorize. However, it was troubling to read in the *Washington Post* that you have "made multiple phone calls to health industry executives, community organizations and church groups and asked that they contribute whatever they can" to outside groups promoting the law¹.

¹ <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/05/10/budget-request-denied-sebelius-turns-to-health-executives-to-finance-obamacare/>

This action raises the question of compliance with your legal obligations as a federal official under both the Anti-deficiency Act, which bars augmentation of congressional appropriations, and federal ethics regulations:

From 5 CFR 2635.101 - Basic obligation of public service.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

As the Secretary of HHS, ObamaCare gives you unprecedented power to regulate a significant share of the U.S. economy, from health plans to hospitals. Your Department is currently negotiating with health plans to establish rates for the ObamaCare Exchanges that are due to open on October 1, 2013. You have publically cited your authority and willingness to force rate reductions on the same companies that the *Washington Post* reports you have requested contribute to your favored ObamaCare promotional groups. Additionally, your Department will soon disburse grants to “navigators” and “non-navigator assistors” that will attempt to help individuals enroll in ObamaCare. Your fundraising from groups that may apply to receive federal grants as “navigators” and “non-navigator assistors” creates the appearance that giving money to meet ObamaCare’s funding needs will result in more favorable consideration of a grant application.

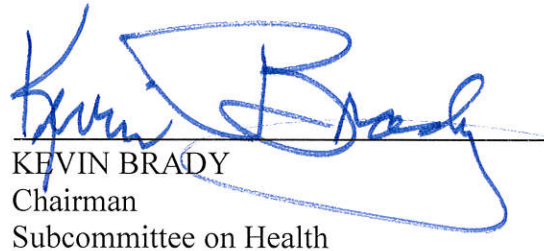
Given the clear appearance of a conflict of interest, and to quickly clear up any potential misperceptions raised by this story, we ask you to respond to the following questions no later than May 27, 2013.

1. Which specific companies and institutions were solicited to contribute to the outside groups? Please provide the name of each organization for which you were soliciting.
2. Did you request a legal opinion on the propriety of making these solicitations? If so, please provide the opinion, in whatever form, and any supporting legal documentation.
3. Please provide any and all background materials, including but not limited to any script, developed for use in making these solicitations.
4. Were any other officials at HHS involved in making solicitations for these outside groups? If so, please provide the names and positions of these officials.

5. Were any other officials in the Obama Administration beyond HHS involved in making solicitations for these outside groups? If so, please provide the names and positions of these officials.
6. Were you made aware of the results of your solicitations? In other words, are you aware of who and who did not respond to your solicitation?
7. Provide all documents and communications in the Department's possession related to these solicitations, including but not limited to electronic mail and other correspondence with solicited entities.

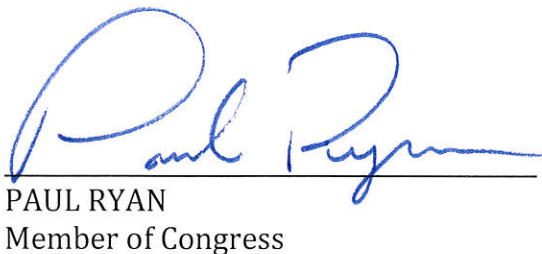
Sincerely,


DAVE CAMP
Chairman


KEVIN BRADY
Chairman
Subcommittee on Health


CHARLES BOUSTANY JR
Chairman
Subcommittee on Oversight


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Member of Congress


PAUL RYAN
Member of Congress


DEVIN NUNES
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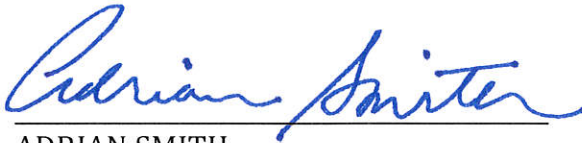
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